

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Consumers Illinois Water Company	:	
	:	03-0403
Tariffs seeking general increase in water	:	
rates for the Kankakee Water Division.	:	

MOTION TO STRIKE PORTIONS OF THE SURREBUTTAL
TESTIMONY OF PAULINE M. AHERN OR IN THE ALTERNATIVE
ALLOW STAFF THE OPPORTUNITY TO RESPOND TO THE TESTIMONY AT
HEARING

NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), through its undersigned counsel, and pursuant to 83 Ill. Adm. Code Sec. 200.190, moves to strike portions of the Surrebuttal Testimony of Pauline M. Ahern or, in the alternative, provide an opportunity for Staff to respond such testimony at hearing. In support of this motion, Staff states as follows:

On May 21, 2003, Consumers Illinois Water Company (“CIWC” or “Company”) filed revised tariff sheets in which it proposed a general increase in water rates for its Kankakee Water Division to become effective July 5, 2003. These tariff sheets were identified as Ill.C.C. No. 47, Section 2: Third Revised Sheet Nos. 2, 3, 4 and 5 and Fourth Revised Information Sheet. The Company simultaneously provided written direct testimony of Messrs. Bunosky and Schreyer and Ms. Ahern supporting the proposed general increase. On June 18, 2003, the Illinois Commerce Commission (“Commission”) suspended the proposed general increase to and including October 18, 2003 and ordered that the matter proceed to hearing to consider the propriety of the

proposed general increase in water rates. The Commission subsequently re-suspended the tariffs to and including April 18, 2004.

On September 19, 2003 and October 3, 2003, Staff filed the Direct Testimony of its witnesses, Messrs. Brian Sant, Thomas Smith, Mike Luth and Ms. Sheena Kight and the Supplemental Direct Testimony of Messrs. Sant and Smith, respectively. Rebuttal Testimony of Company witnesses Ahern and Schreyer was filed on October 20, 2003. Staff rebuttal testimony of Witnesses Sant, Smith, Luth and Kight was filed on November 17, 2003. Company surrebuttal was filed on December 1, 2003.

As part of the Company's surrebuttal testimony, Company witness Ahern improperly included new argument and evidence that should be stricken. Specifically, on lines 24-26 on page 6 and lines 1-12 on page 7 of her surrebuttal testimony, Ms. Ahern sets forth the following:

Finally, CIWC has an arm's length rating of 2 assigned by National Association of Insurance Commissioners (NAIC), which rates the debt issues of small companies who place debt privately with insurance companies. CIWC is one such company because it is unable to place debt in the public markets at a reasonable cost due to its extremely small size. Furthermore, an NAIC rating of 2 is equivalent to the Moody's Baa or S&P BBB bond rating category as indicated in CIWC's response to Staff Data Request SK 3.01 which is attached as Schedule 1. CIWC's rating of 2 by the nationally known NAIC stands in stark contrast to Ms. Kight's imputed bond rating of A+ based upon only four financial ratios for a recent 3 year time period which is not consistent with S&P's bond / credit rating methodology.

Q. What is the relevance of CIWC's rating of 2 by the NAIC?

A. CIWC's rating of 2 by the NAIC is relevant because Ms. Kight's recommended common equity cost rate of 9.86% is based upon the market information of companies with bond / credit ratings in Moody's and S&P's A rating category. As stated above, an NAIC rating of 2 is equivalent to the Moody's Baa and S&P BBB bond / credit rating categories.

Nowhere in its prior testimony did the Company attempt to present or support such an argument by relying on reference to the NAIC. In fact, a fair reading of Ms Ahern's rebuttal testimony (page 11, lines 2 and page 12 lines 1-17) implies a contradictory position on the part of the Company. It is clearly unfair for the Company to attempt to propose and support a completely new argument in surrebuttal testimony, knowing that Staff will have not opportunity to test and/or respond to this new argument. CIWC's choice of timing for the proposal has denied Staff the opportunity to review the information, engage in discovery in regards to the information and provide testimony in response to the issues raised by the information.

Further, Ms. Ahern's testimony is not proper surrebuttal testimony because it attempts to provide new evidence, rather than responding to Staff rebuttal testimony. The information CIWC provided in the testimony cited was available at the time of the initial and rebuttal filings. As such, it should have been propounded at that time.

The cited testimony, if allowed into the record, will result in significant prejudice to Staff's case. On the basis of its improper timing and substance, this testimony should be stricken. In the event that this Motion to Strike is not granted, Staff should be provided the opportunity to provide testimony at the hearing in response to this new evidence submitted by the Company.

WHEREFORE, for the foregoing reasons Staff respectfully requests the Commission to:

A. Strike the following portions of the Surrebuttal Testimony of Pauline M.

Ahern: p. 6, lines 24-26, and p. 7, lines 1-12;

Or, in the alternative:

- B. Allow Staff to respond to the testimony in question at the hearing; and
- C. Allow such other and further relief, as this Commission deems appropriate.

Respectfully submitted,

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